

Application No. 09/910,821

**REMARKS**

In the Office Action, the Examiner noted that claims 1, 3, 7, 9-18 and 27-45 are pending in the application, and that claims 1, 3, 7, 9-18 and 27-45 are rejected. By this Amendment, claims 1, 17, 28, 38 and 40 have been amended, and claims 2, 4-8, 13-16, 18-26, 31-32 and 41-45 are cancelled. Thus, claims 1, 3, 9-12, 17, 27-30, and 33-40 are pending in the application. The Examiner's rejections are traversed below.

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**Rejection Under 35 U.S.C. Section 102**

Claims 1, 3, 7, 9-18 and 27-45 are rejected under 35 U.S.C. Section 102(e) as being anticipated by Walker et al., U.S. Patent 6,107,932. Applicant respectfully disagrees.

Walker et al. provides a ticket that can be altered by a ticket holder to obtain a refund or an upgrade. Because the ticket is altered, the ticket holder need not physically surrender the ticket to another entity in order to obtain the refund or upgrade. In this way, the problems associated with the services and programs of the prior art which require physically surrendering the ticket for such refunds or upgrades are overcome. Thus, Walker et al. does not at all relate to the present invention as discussed in detail with the Examiner and as described below in an element-by-element comparison.

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Applicant next provides an element-by-element comparison between Walker et al. and the presently claimed invention. As can be seen, there are significant differences between Walker et al. and the present invention. Since anticipation requires a showing of each and every claimed element, Applicant respectfully submits that the anticipation rejection should be withdrawn, and such action is earnestly requested. To expedite the Examiner's review, Applicant has bolded some of the differences between Walker et al. and the presently claimed invention. This should not be construed as any admission that Walker et al. shows any of the features of the present invention.

Without conceding that Walker et al. shows any of the features of the presently claimed invention, Walker et al. fails to show or suggest, for example, **"determining a predetermined time period associated with the event indicative of another event customer from event customers not attending the event in accordance with first predetermined criteria."** Further, Walker et al. fails to show or suggest the claimed feature of **"releasing an allocation associated with the another event customer and notifying at least one of the event customers that are at least one of currently attending the event and registered for said at least one of reallocating, reprovisioning, upgrading and awarding responsive to said releasing the allocation."**

Walker et al. also fails to show or suggest the claimed features of:

**"(e) determining a predetermined time period associated with the event indicative of another event customer from event customers not attending the event in accordance with first predetermined criteria including at least one of agreement with one or more of the event customers, the event customer not providing notice of non-attendance a first predetermined**

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time period prior to the event, the event customer not providing notice of non-attendance a second predetermined time period after start of the event, the event customer leaving the event early, and other predetermined criteria;

(f) polling the wireless devices of a plurality of users to determine whether additional seats have been made available, and if additional seats have been made available, then adding the additional seats to a list of available seats for said method of dynamically at least one of allocating, upgrading and awarding admittance to the events to the event customer;

(g) releasing an allocation associated with the another event customer and notifying at least one of the event customers that are at least one of currently attending the event and registered for said at least one of reallocating, reprovisioning, upgrading and awarding responsive to said releasing the allocation;

(h) accepting by at least one of the event customers said at least one of reallocating, reprovisioning, upgrading and awarding in accordance with second predetermined criteria;

(i) transmitting a confirmation to the at least one wireless device of the at least another event customer to be used by the at least another event customer to utilize the at least another seating location;

(j) presenting, by the at least another event customer, at least one of the confirmation and another ticket associated with a previous seating location, to identify and utilize the at least another seating location;

(k) processing customer profiles in accordance with predetermined customer criteria, and determining responsive to the processing of the customer profiles event customers to be notified via the at least one wireless device, and notifying the event customers responsive to the customer profiles comprising at least one of communication, patron satisfaction communication, additional revenue, additional advertising, and advertising sponsorship for advertising on the wireless device; and

(l) polling the wireless devices of a plurality of users for additional communications including additional requests for at least one of additional movie tickets, additional sporting

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event tickets, additional concessions, additional services, additional offers, additional entertainment services and additional merchandise.”

Thus, for these reasons, Applicant respectfully submits that the combination of limitations recited in Claim 1 is patentably distinguishable over Walker et al, when Claim 1 is interpreted as a whole. Withdrawal of this rejection is respectfully requested.

In addition, the remaining independent claims and dependent claims are also clearly patentably distinguishable over Walker et al. when each claim is interpreted as a whole. Withdrawal of the rejection of these claims is respectfully requested.

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### CONCLUSION

Applicant respectfully submits that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicant does not concede that the cited prior art shows any of the elements recited in the claims. However, Applicant has provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicant strongly emphasizes that one reviewing the prosecution history should not interpret any of the examples Applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, Applicant asserts that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicant has emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, Applicant does not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, Applicant is providing examples of why the claims described above are distinguishable over the cited prior art.

Applicant wishes to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, Applicant reserves the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Amendment are not to be construed as a surrender of any subject matter between the original claims and the present claims;

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rather merely Applicant's best attempt at providing one or more definitions of what the Applicant believes to be suitable patent protection. In addition, the present claims provide the intended scope of protection that Applicant is seeking for this application. Therefore, no estoppel should be presumed, and Applicant's claims are intended to include a scope of protection under the Doctrine of Equivalents.

Further, Applicant hereby retracts any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were unnecessary to obtain allowance, and only maintains the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, Applicant specifically retracts statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, Applicant respectfully submits that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, Applicant respectfully submits that the Application is in condition for allowance, and that such action is earnestly solicited.

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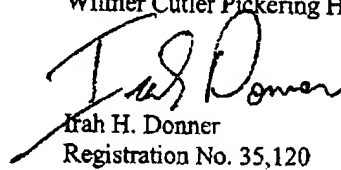
AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees, which may be required for this Amendment, or credit any overpayment to Deposit Account No. 08-0219

In the event that an Extension of Time is required, or which may be required in addition to that requested in a petition for an Extension of Time, the Commissioner is requested to grant a petition for that Extension of Time which is required to make this response timely and is hereby authorized to charge any fee for such an Extension of Time or credit any overpayment for an Extension of Time to Deposit Account No. 08-0219.

Respectfully submitted,

Wilmer Cutler Pickering Hale and Dorr LLP

  
Ifah H. Donner  
Registration No. 35,120

399 Park Avenue  
New York, NY 10022  
TEL (212) 230-8887  
FAX (212) 230-8888

Date: 7/20/05

IHD